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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
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SWANSON & BRATSCHEUN, L.L.C. 8210 SOUTHPARK TERRACE LITTLETON, CO 80120				
EXAMINER				
JOHNSON, MATTHEW A				
ART UNIT		PAPER NUMBER		
3682				
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09/05/2008		PAPER		

**Please find below and/or attached an Office communication concerning this application or proceeding.**

The time period for reply, if any, is set in the attached communication.

# Office Action Summary

**Application No.**

10/679,128

**Applicant(s)**

LUMPKIN, WAYNE R.

**Examiner**

MATTHEW JOHNSON

**Art Unit**

3682

-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --  
**Period for Reply**

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) OR THIRTY (30) DAYS, WHICHEVER IS LONGER, FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133). Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

**Status**

- 1) ☒ Responsive to communication(s) filed on 17 June 2008.  
2a) ☒ This action is **FINAL**. 2b) ☐ This action is non-final.  
3) ☐ Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

**Disposition of Claims**

- 4) ☒ Claim(s) 1-17 is/are pending in the application.  
4a) Of the above claim(s) \_\_\_\_\_ is/are withdrawn from consideration.  
5) ☐ Claim(s) \_\_\_\_\_ is/are allowed.  
6) ☒ Claim(s) 1-17 is/are rejected.  
7) ☐ Claim(s) \_\_\_\_\_ is/are objected to.  
8) ☐ Claim(s) \_\_\_\_\_ are subject to restriction and/or election requirement.

**Application Papers**

- 9) ☐ The specification is objected to by the Examiner.  
10) ☒ The drawing(s) filed on 03 October 2003 is/are: a) ☒ accepted or b) ☐ objected to by the Examiner.  
Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).  
Replacement drawing sheet(s) including the correction is required if the drawing(s) is objected to. See 37 CFR 1.121(d).  
11) ☐ The oath or declaration is objected to by the Examiner. Note the attached Office Action or form PTO-152.

**Priority under 35 U.S.C. § 119**

- 12) ☐ Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).  
a) ☐ All b) ☐ Some \* c) ☐ None of:  
1. ☐ Certified copies of the priority documents have been received.  
2. ☐ Certified copies of the priority documents have been received in Application No. \_\_\_\_\_.  
3. ☐ Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).

\* See the attached detailed Office action for a list of the certified copies not received.

**Attachment(s)**

- 1) ☒ Notice of References Cited (PTO-892)  
2) ☐ Notice of Draftsperson's Patent Drawing Review (PTO-948)  
3) ☐ Information Disclosure Statement(s) (PTO-8508)  
4) ☐ Interview Summary (PTO-413)  
5) ☐ Notice of Informal Patent Application  
6) ☐ Other: \_\_\_\_\_  
Paper No(s)/Mail Date \_\_\_\_\_

**DETAILED ACTION**

1. In view of the Appeal Brief filed on 6/17/2008, PROSECUTION IS HEREBY REOPENED. A new ground of rejection is set forth below.

To avoid abandonment of the application, appellant must exercise one of the following two options:

(1) file a reply under 37 CFR 1.111 (if this Office action is non-final) or a reply under 37 CFR 1.113 (if this Office action is final); or,

(2) initiate a new appeal by filing a notice of appeal under 37 CFR 41.31 followed by an appeal brief under 37 CFR 41.37. The previously paid notice of appeal fee and appeal brief fee can be applied to the new appeal. If, however, the appeal fees set forth in 37 CFR 41.20 have been increased since they were previously paid, then appellant must pay the difference between the increased fees and the amount previously paid.

A Supervisory Patent Examiner (SPE) has approved of reopening prosecution by signing below:

/Richard WL Ridley/

Supervisory Patent Examiner, Art Unit 3682.

***Claim Rejections - 35 USC § 102***

2. The following is a quotation of the appropriate paragraphs of 35 U.S.C. 102 that form the basis for the rejections under this section made in this Office action:

A person shall be entitled to a patent unless –

(b) the invention was patented or described in a printed publication in this or a foreign country or in public use or on sale in this country, more than one year prior to the date of application for patent in the United States.

3. Claims 1, 4, 6-8, 14 and 15, are rejected under 35 U.S.C. 102(b) as being anticipated by Nielsen (USP-6,186,027).

Re clm 1: Nielsen discloses a clamp structure comprising a(n):

- First arm (36,42A) having a distal end (42A) defining a first threaded through bore (42A, C3 L25-28)
- Second arm (36,42B) having a distal end (42B) defining a second threaded through bore (Figure 3, C3 L25-28), wherein the first threaded bore and the second threaded bore are essentially coaxial (Fig. 3)
- Screw (40) comprising a head and a shank (Fig. 3), the head being at one end of the shank and the shank having a threaded portion at a second end opposite the first end and a clearance portion (portion that is not threaded) between the threaded portion and the head (Fig. 3), the screw being configured so that with a threaded engagement between the threaded portion of the shank and either the first threaded through bore (42A) of the first arm (36, 42A) or the second threaded bore (42B) of the second arm (36, 42B) and the head abutting the other of the first and second arms opposite the threaded engagement, the clearance portion resides within the other of the first and second threaded through bores (Fig. 3)

Re clm 4: Nielsen discloses a clamp structure wherein each of the first and second arms have a proximal end (34) attached to a bicycle component (8).

Re clm 6: Nielsen discloses a method of attaching a clamp to a frame comprising:

- Providing a frame (38)
- Providing a symmetric clamp structure (36, 42A, 42B) comprising a first arm (36, 42A) having a distal end (42A) defining a first threaded bore (C3 L25-28), a second arm (36, 42B) having a distal end (42B) defining a second threaded bore (C3 L25) wherein the first threaded bore (42A) and the second threaded bore (42B) are essentially coaxial (C3 L22) and have essentially the same size and pitch threading (Fig. 3)
- Providing a screw (40) comprising a head and a shank, the head being at one end of the shank and a threaded portion being at a second end of the shank opposite the first end (Fig. 3), the threaded portion being sized to threadably engage both the first and second threaded bores, the shank further comprising a clearance portion (non threaded portion) between the threaded portion and the head (Fig. 3)
- Engaging the screw with the clamp by screwing the threaded portion into a threaded engagement with either of the first and second threaded bores such that the head abuts the arm opposite the threaded engagement and the clearance portion clears the threads of the threaded bore opposite the threaded engagement (screw 40 is capable of being screwed into either bore)

- Placing the clamp over the frame so that the frame is received between the first and second arms of the clamp (Fig. 3)
- Tightening the screw thereby driving the distal ends of the first and second arms toward each other, thereby attaching the clamp to the frame (C3 L23-25)

Re clms 7 and 8: Nielsen discloses the frame is a tubular bicycle handlebar/frame (38, handlebar is part of the frame).

Re clms 14 and 15: Nielson discloses the clearance portion being non-threaded (Fig. 3).

### ***Claim Rejections - 35 USC § 103***

4. The following is a quotation of 35 U.S.C. 103(a) which forms the basis for all obviousness rejections set forth in this Office action:

(a) A patent may not be obtained though the invention is not identically disclosed or described as set forth in section 102 of this title, if the differences between the subject matter sought to be patented and the prior art are such that the subject matter as a whole would have been obvious at the time the invention was made to a person having ordinary skill in the art to which said subject matter pertains. Patentability shall not be negated by the manner in which the invention was made.

5. Claims 2, 3, 10 and 16, are rejected under 35 U.S.C. 103(a) as being unpatentable over Nielsen (USP-6,186,027) in view of Hand et al. (USP-1,870,112).

Re clms 2 and 3: While Nielson does indeed disclose a clearance portion (non threaded portion) having an outer diameter sized to clear the first (42A) and second (42B) threaded bores, Nielson does not disclose the clearance portion having a length at least equal to the axial length of each threaded bore.

Hand teaches a clamping system (Fig. 2) comprising a screw having a head (9), a threaded portion (6) and a clearance portion (7), the clearance portion has an outer diameter sized to clear a through bore (5) and having a length at least equal to (as well as exceeds, Fig. 2) the axial length of a threaded through bore (4) for the purpose of allowing the clearance portion to be freely received in the bore without contacting the walls and to force the arms of the clamp towards each other thus facilitating the clamping action (C2 L69-87).

It would have been obvious to a person having ordinary skill in the art at the time the invention was made to have modified the device of Nielson such that the clearance portion has a length at least equal to (as well as exceeds) the axial length of each threaded bore, as taught by Hand, for the purpose of allowing the clearance portion to be freely received in the bore without contacting the walls and to force the arms of the clamp towards each other thus facilitating the clamping action (C2 L69-87).

Re clm 10: Nielsen discloses a method of manufacturing a symmetrical clamp structure comprising:

- Providing a clamp body (36) having a first arm (36, 42A) having a distal end (42A) and a second arm (36, 42B) having a distal end with the distal end of the first arm and the distal end of the second arm being substantially adjacent to each other and defining a gap between the arms (Fig. 3)
- Forming coaxial cylindrical threaded bores (42A, 42B; C3 L21-28) through the distal ends of the first and second arms

- Providing a screw (40) having a head at one end and a threaded shank extending from the head to an opposite end with the threaded shank being sized to threadably engage the threaded bores through the distal ends of the first and second arms (Fig. 3)
- Forming a clearance portion on the shank between the head and the opposite end of the shank such that the clearance portion extends toward but not to the opposite end, leaving a portion of the shank opposite the head threaded (Fig. 3)
- Assembling the clamp by threadably engaging the screw with either of the first and second threaded bores (screw 40 is capable of being screwed into either bore) such that the head abuts the arm opposite the threaded engagement and the clearance portion clears the threads of the threaded bore opposite the threaded engagement (Fig. 3)

While Nielson does indeed disclose co-axial threaded bores (42A and 42B) having identical lengths and a clearance portion (non-threaded portion), Nielson does not disclose each threaded bore having a length less than a select length and a clearance portion of the shank of the select length.

Hand teaches a clamp having a threaded bore (4) less than a select length (length of 7) and a clearance portion (7) of the select length (Fig. 2) for the purpose of achieving the predictable result of forcing the arms of the clamp towards each other thus facilitating the clamping action (C2 L69-87).

It would have been obvious to a person having ordinary skill in the art at the time the invention was made to have modified the device of Nielson such that each threaded bore has a length less than a select length and a clearance portion of the shank of the select length, as taught by Hand, for the purpose of achieving the predictable result of forcing the arms of the clamp towards each other thus facilitating the clamping action (C2 L69-87).

Re clm 16: Hand further discloses the clearance portion (7) being non-threaded (Fig. 2).

6. Claim 9 is rejected under 35 U.S.C. 103(a) as being unpatentable over Nielsen (USP-6,186,027) in view of Duda (USP-2,287,343).

Re clm 9: While Nielson does indeed disclose a screw (40) that is capable of threaded engagement with either the first and second threaded through bore, Nielson does not explicitly disclose removing the screw from threaded engagement with either the first and second arms and engaging and tightening the screw in an opposite orientation such that the screw is threadably engaged with the other arm.

Duda teaches a clamping system having a screw (9) that can be removed from a threaded bore (8) and screwed in an opposite orientation (C2 L32-43) for the purpose of facilitating assembly and to achieve the predictable result of tightening the clamp.

It would have been obvious to a person having ordinary skill in the art at the time the invention was made to have removed the screw of Nielson from threaded engagement with either the first and second arms and engaging and tightening the

screw in an opposite orientation such that the screw is threadably engaged with the other arm, as taught by Duda, for the purpose of facilitating assembly and to achieve the predictable result of tightening the clamp.

7. Claims 1, 4 and 5, are rejected under 35 U.S.C. 103(a) as being unpatentable over Gelbein (USP-5584210) in view of Nielsen (USP-6,186,027).

Re clm 1: Gelbein discloses a symmetric clamp structure comprising a(n):

- First arm (right side of 32) having a distal end (54) defining a first threaded through bore (56, C3 L26)
- Second arm (left side of 32) having a distal end (54) defining a second through bore (56)
- Screw (58) comprising a head and a shank, the head being at one end of the shank and the shank having a threaded portion (58) at a second end opposite the first end

Gelbein discloses all of the claimed subject matter as described above.

Gelbein does not disclose a second threaded through bore, wherein the first threaded through bore and the second threaded through bore are essentially coaxial, and a screw having a clearance portion between the threaded portion and the head, the screw being configured so that with a threaded engagement between the threaded portion of the shank and either of the first threaded through bore of the first arm or the second threaded through bore of the second arm and the head abutting the other of the

first and second arms opposite the threaded engagement, the clearance portion resides within the other of the first and second threaded through bores.

Nielsen teaches a clamp (36, 42A, 42B) comprising a first threaded bore (42A, C3 L25-28) and a second threaded bore (42B), wherein the first threaded bore and the second threaded bore are essentially coaxial (C3 L22), and a screw (40) having a clearance portion between the threaded portion and the head (Fig. 3), the screw being configured so that with a threaded engagement between the threaded portion of the shank and one of the first and second threaded bores and the head abutting one of the first and second arms opposite the threaded engagement, the clearance portion resides within the other of the first and second threaded bores (Fig. 3), for the purpose of drawing the lugs together so as to compress the tubular member about the handlebar thereby locking the handlebar in place (C3 L21-25) and for positively and securely locking the clamp (C1 L65-66).

It would have been obvious to a person having ordinary skill in the art at the time the invention was made to have employed in the device of Gelbein a second threaded through bore, wherein the first threaded through bore and the second threaded through bore are essentially coaxial, and a screw having a clearance portion between the threaded portion and the head, the screw being configured so that with a threaded engagement between the threaded portion of the shank and either of the first threaded through bore of the first arm or the second threaded through bore of the second arm and the head abutting the other of the first and second arms opposite the threaded engagement, the clearance portion resides within the other of the first and second

threaded through bores, as taught by Nielsen, for the purpose of drawing the lugs together so as to compress the tubular member about the handlebar thereby locking the handlebar in place (C3 L21-25), and for positively and securely locking the clamp (C1 L65-66).

Re clm 4: Gelbein further discloses each of the first and second arms have a proximal end (26) attached to a bicycle component (40).

Re clm 5: Gelbein discloses the bicycle component (40) is a brake lever (Fig. 3).

8. Claims 11-13 and 17 are rejected under 35 U.S.C. 103(a) as being unpatentable over Gelbein (USP-5584210) in view of Nielsen (USP-6,186,027) further in view of Hand et al. (USP-1,870,112).

Re clm 11: Gelbein discloses a bicycle brake lever comprising:

- A housing (30)
- A lever (40) pivotably attached to the housing
- A clamp (50) attached to the housing
- First (right side of 32) and second (left side of 32) arms configured to receive a bicycle handlebar (12) axially therebetween, each of the first and second arms having a distal end (54), the distal ends having a space therebetween (Figs. 1-3), the first arm further having a first threaded through bore (56) at its distal end and the second arm further having a second through bore (56) at its distal end

- A screw (58) comprising a head and a shank, the head being at one end and the shank having a threaded portion at a second end opposite the first end (Fig. 3)

Gelbein does not disclose a second threaded through bore, a screw having a clearance portion between the threaded portion and the head, the screw being configured so that with a threaded engagement between the threaded portion of the shank and either of the first threaded through bore of the first arm or the second threaded through bore of the second arm and the head abutting the other of the first or second arms opposite the threaded engagement, the clearance portion resides within the other of the first and second threaded through bores, such that there is no threaded engagement between the threaded portion of the shank and the other of the first and second threaded through bores.

Nielsen teaches clamp (36) having a first threaded through bore (42A, C3 L25-28), a second threaded through bore (42B), a screw (40) having a clearance portion between the threaded portion and the head (Fig. 3), the screw being configured so that with a threaded engagement between the threaded portion of the shank and either of the first threaded through bore of the first arm (36, 42A) or the second threaded through bore of the second arm (36, 42B) and the head abutting the other of the first or second arms opposite the threaded engagement, the clearance portion resides within the other of the first and second threaded through bores (Fig. 3) for the purpose of drawing the lugs together so as to compress the tubular member about the handlebar thereby

locking the handlebar in place (C3 L21-25), and for positively and securely locking the clamp (C1 L65-66).

It would have been obvious to a person having ordinary skill in the art at the time the invention was made to have employed in the device of Gelbein a second threaded through bore, a screw having a clearance portion between the threaded portion and the head, the screw being configured so that with a threaded engagement between the threaded portion of the shank and either of the first threaded through bore of the first arm or the second threaded through bore of the second arm and the head abutting the other of the first or second arms opposite the threaded engagement, the clearance portion resides within the other of the first and second threaded through bores, as taught by Nielsen, for the purpose of drawing the lugs together so as to compress the tubular member about the handlebar thereby locking the handlebar in place (C3 L21-25), and for positively and securely locking the clamp (C1 L65-66).

Gelbein in view of Nielsen disclose all of the claimed subject matter as described above.

Gelbein in view of Nielsen discloses the clearance portion resides within the other of the first and second threaded through bores, Nielsen does not disclose that there is no threaded engagement between the threaded portion of the shank and the other of the first and second threaded through bores.

Hand teaches a clamping system (Fig. 2) comprising a screw having a head (9), a threaded portion (6) and a clearance portion (7), the clearance portion resides within

the other through bore (5), such that there is no threaded engagement between the threaded portion of the shank and the through bore (5) for the purpose of allowing the clearance portion to be freely received in the bore without contacting the walls and to force the arms of the clamp towards each other thus facilitating the clamping action (C2 L69-87).

It would have been obvious to a person having ordinary skill in the art at the time the invention was made to have incorporated the teachings of Hand in the device of Gelbein in view of Nielson such that the clearance portion resides within the other of the first and second threaded through bores, such that there is no threaded engagement between the threaded portion of the shank and the other of the first and second threaded through bores, as taught by Hand, for the purpose of allowing the clearance portion to be freely received in the bore without contacting the walls and to force the arms of the clamp towards each other thus facilitating the clamping action (C2 L69-87).

Re clms 12 and 13: While Gelbein in view of Nielson does indeed disclose a clearance portion (non threaded portion) having an outer diameter sized to clear the first (42A) and second (42B) threaded bores, Nielson does not disclose the clearance portion having a length at least equal to the axial length of each threaded bore.

Hand teaches a clamping system (Fig. 2) comprising a screw having a head (9), a threaded portion (6) and a clearance portion (7), the clearance portion has an outer diameter sized to clear a through bore (5) and having a length at least equal to (as well as exceeds, Fig. 2) the axial length of a threaded through bore (4) for the purpose of allowing the clearance portion to be freely received in the bore without contacting the

walls and to force the arms of the clamp towards each other thus facilitating the clamping action (C2 L69-87).

It would have been obvious to a person having ordinary skill in the art at the time the invention was made to have modified the device of Gelbein in view of Nielson such that the clearance portion has a length at least equal to (as well as exceeds) the axial length of each threaded bore, as taught by Hand, for the purpose of allowing the clearance portion to be freely received in the bore without contacting the walls and to force the arms of the clamp towards each other thus facilitating the clamping action (C2 L69-87).

Re clm 17: Hand further discloses the clearance portion (7) being non-threaded (Fig. 2).

### ***Response to Arguments***

9. Applicant's arguments filed 6/17/2008 regarding claims 1 and 6 have been fully considered but they are not persuasive.

#### **102(b) Nielsen**

Regarding claims 1 and 6, Applicant argues that Nielsen does not disclose that the screw can be threaded with either the first or second through bore. As described above, Nielsen discloses that the bore 42A may be threaded and the screw is capable of being engaged in either threaded through bore. Additionally, the term "either" does not necessarily mean both. As long as the screw of Nielsen engages the threads of at least one threaded bore (42B) the limitation is met.

Applicant further argues that the clamp of Nielsen would not function as a clamp if the bore 42A were threaded due to the diameters of the threaded portion and the clearance portion. Nielsen clearly discloses that the bore 42A may be threaded, thus disclosing all the claimed structure and therefore anticipates the claim.

**103(a) Gelbein in view of Nielsen**

Regarding claims 1 and 6, Applicant argues that Nielsen does not disclose the screw can be threadably engaged with either threaded bore. See above for response. Additionally Applicant argues the bodily incorporation of the threaded bores of Nielsen into the device of Gelbein. The test for obviousness is not whether the features of a secondary reference may be bodily incorporated into the structure of the primary reference; nor is it that the claimed invention must be expressly suggested in any one or all of the references. Rather, the test is what the combined teachings of the references would have suggested to those of ordinary skill in the art. See *In re Keller*, 642 F.2d 413, 208 USPQ 871 (CCPA 1981). Additionally, Gelbein discloses through bores (56) that are already coaxial, the modification simply requiring adding threads to the existing bore.

Regarding claims 4 and 5 Applicant argues that the bores of Gelbein are not disposed at a distal end. Applicant's definition of distal and proximal in the arguments is narrower than that which is claimed. In other words, the distal and proximal ends are not claimed relative to a body as argued by Applicant. As seen in Figs. 1-3 the arms 32 extend from base 20, the bores being at a distal end and the portion attached to the bicycle component being at a proximal end.

Applicant's arguments with respect to claims 2-3, 9-17 have been considered but are moot in view of the new ground(s) of rejection.

***Conclusion***

10. **THIS ACTION IS MADE FINAL.** Applicant is reminded of the extension of time policy as set forth in 37 CFR 1.136(a).

A shortened statutory period for reply to this final action is set to expire **THREE MONTHS** from the mailing date of this action. In the event a first reply is filed within **TWO MONTHS** of the mailing date of this final action and the advisory action is not mailed until after the end of the **THREE-MONTH** shortened statutory period, then the shortened statutory period will expire on the date the advisory action is mailed, and any extension fee pursuant to 37 CFR 1.136(a) will be calculated from the mailing date of the advisory action. In no event, however, will the statutory period for reply expire later than **SIX MONTHS** from the mailing date of this final action.

Any inquiry concerning this communication or earlier communications from the examiner should be directed to **MATTHEW JOHNSON** whose telephone number is (571)272-7944. The examiner can normally be reached on Monday - Friday 8:30a.m. - 5:00p.m. EST.

If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, Richard Ridley can be reached on 571-272-6917. The fax phone number for the organization where this application or proceeding is assigned is 571-273-8300.

Information regarding the status of an application may be obtained from the Patent Application Information Retrieval (PAIR) system. Status information for published applications may be obtained from either Private PAIR or Public PAIR. Status information for unpublished applications is available through Private PAIR only. For more information about the PAIR system, see <http://pair-direct.uspto.gov>. Should you have questions on access to the Private PAIR system, contact the Electronic Business Center (EBC) at 866-217-9197 (toll-free). If you would like assistance from a USPTO Customer Service Representative or access to the automated information system, call 800-786-9199 (IN USA OR CANADA) or 571-272-1000.

/M. J./  
Examiner, Art Unit 3682

/Richard WL Ridley/  
Supervisory Patent Examiner, Art Unit 3682

